

**CONFIDENTIAL MATERIALS EXCLUDED**

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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Docket No. 11-12

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**HANJIN SHIPPING CO., LTD.;  
KAWASAKI KISEN KAISHA, LTD.;  
NIPPON YUSEN KAISHA;  
UNITED ARAB SHIPPING COMPANY (S.A.G.); and  
YANG MING MARINE TRANSPORT CORPORATION,**

**COMPLAINANTS**

**v.**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY,**

**RESPONDENT**

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**DECLARATION OF PETER ZANTAL**

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I, Peter Zantal, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:

1 I am General Manager of Strategic Analysis and Industry Relations for the Port Commerce Department of the Port Authority of New York and New Jersey (the "Port Authority"). I have been employed by the Port Authority for the past 29 years. I have been in my current position for the past 11 years.

2 I make this declaration in support of the Port Authority's Opposition to Complainants' Motion for Judgment, filed February 1, 2013.

3 As the General Manager of Strategic Analysis and Industry Relations for the Port Commerce Department, my responsibilities include market analysis, sales, long range planning, and industry communications.

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4. I helped oversee and was directly involved in the analysis, planning, communication, and implementation of the March 14, 2011 amendment to the Port Authority's Tariff, which added a Cargo Facility Charge ("CFC").

### **Organization and Use of Facilities at the Port**

5. The Port Authority is a corporate body created by compact as a bi-state port district between the states of New York and New Jersey with consent of Congress. The Port Authority is a massive and highly diversified transportation enterprise that includes an airport system, marine terminals and ports, the PATH rail transit system connecting New Jersey and New York City, six tunnels and bridges between New York and New Jersey, and the Port Authority Bus Terminal in Manhattan.

6. The Port Authority manages Port Newark, the Elizabeth-Port Authority Marine Terminal, the Howland Hook Marine Terminal, the Brooklyn-Port Authority Marine Terminal, the Red Hook Container Terminal, and the Port Jersey Port Authority Marine Terminal. Combined, these facilities make up the marine terminal facilities of the Port of New York and New Jersey.

7. The Port Authority maintains and operates public berths. Most of the non-containerized cargo (including vehicles, bulk, and break-bulk cargo) coming into and out of the port use public berths. Private stevedores offer loading and unloading services at these public berths.

8. The Port Authority also leases terminal space to private marine terminal operators ("MTOs"). The Port Authority has issued leases to APM Terminals ("APM"), Global Terminal and Container Services ("Global Terminals"), Maher Terminals Inc. ("Maher"), New York Container Terminal ("NYCT"), and Port Newark Container

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Terminal ("PNCT")). The Port Authority also has an operating agreement with Red Hook Container Terminal LLC ("RHCT") through March 2013.

9. The leases issued by the Port Authority to Global Terminals, Maher, NYCT and PNCT contain clauses making the Port Authority's rules and regulations applicable at the leased premises. Attached hereto as Exhibit 1 is an excerpt from the Global Terminals lease No. LPJ-001, which is publicly available at <http://www.panynj.gov/corporate-information/pdf/port-lease-global.pdf>. Attached hereto as Exhibit 2 is an excerpt from the Maher lease, which is publicly available at <http://www.panynj.gov/corporate-information/pdf/port-lease-maher-terminals.pdf>. Attached hereto as Exhibit 3 is an excerpt from the Maher Lease No. EP-251, dated Sept. 1, 2001 (PA-CFC00053837-878). Attached hereto as Exhibit 4 is an excerpt from the NYCT lease, which is publicly available at <http://www.panynj.gov/corporate-information/pdf/port-lease-howland-hook.pdf>. Attached hereto as Exhibit 5 is an excerpt from the NYCT Lease No. HHT-6, dated Mar. 31, 2004 (PA-CFC00054575-629). Attached hereto as Exhibit 6 is an excerpt from the PNCT lease No. L-PN-264, dated Dec. 1, 2000 (PA-CFC00056957-251). Attached hereto as Exhibit 23 is an excerpt from the APM Terminals Lease No. EP-248, dated Jan. 6, 2000 (PA-CFC00049668-798).

### **The Port Authority's Investments in Infrastructure, Intermodal Transportation, and Security**

10. The Port Authority has undertaken major infrastructure projects at the port for the benefit of the users of the port, including the construction of on-dock rail facilities and substantial improvements to the port's congested roadways. Attached hereto as Exhibit 7 is an undated Port Authority Presentation entitled "Cargo Facility Charge," which details some of the infrastructure, intermodal transportation, and security projects

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that the Port Authority has undertaken. (PA-CFC00019082-090). Attached hereto as Exhibit 8 is the "2010 PANYNJ Port Guide," revised Sept 17, 2009, which also describes some of the infrastructure, intermodal transportation, and security projects that the Port Authority has undertaken. (PA-CFC00000239-255).

11. The Port Authority has invested and continues to invest more than \$600 million in the development of the ExpressRail system. Prior to the development and operation of the ExpressRail system, containers had to be transported from the docks to off-dock rail terminals via truck.

12. The Port Authority has also made (and continues to make) major investments in roadway projects to increase capacity, reduce the high number of traffic accidents, reduce truck idling times, and mitigate the attendant negative environmental impact caused by idling.

13. The Port Authority's roadway projects to increase capacity include the expansion of Port Street, adding lanes to McLester Street, softening the North Avenue turn to reduce the high number of traffic accidents, and other measures that reduce truck idling times and mitigate the attendant negative environmental impact caused by idling. The total estimated cost of these roadway projects is \$83.9 million. Attached hereto as Exhibit 9 is a true and correct copy of a Port Authority Port Commerce spreadsheet detailing the costs of the projects funded by the CFC and calculating the net present value of such projects. (PA-CFC00019910-956).

14. In addition, in the wake of the September 11, 2011 terrorist attacks, the Port Authority was federally mandated to expend substantial, additional sums for security improvements. The Port Authority has invested more than \$125 million over a seven-

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year period in post-9/11 security enhancements. The Port Authority's security enhancements include putting in place leading-edge technologies such as a closed-circuit system that integrates intelligent video, license plate readers, geospatial data, and direct information downlinking. The Port Authority's security enhancements also include implementing upgrades necessary to obtain certification in the U.S. Department of Homeland Security's Customs-Trade Partnership Against Terrorism program. Attached hereto as Exhibit 10 is a true and correct copy of a presentation entitled "Implementation of a Land-Side Access Infrastructure and Security Fee," dated Aug. 2, 2010, explaining the unfunded security upgrades that the Port Authority was required by federal law to make in the wake of the 9/11 terrorist attacks. (PA-CFC00035866-877).

15. The Port Authority's aforementioned investments were designed to improve efficiency at the port by increasing landside access capacity, reducing congestion on port roadways, and improving security. Attached hereto as Exhibit 11 is a true and correct copy of a "Draft of proposed response to CKYIU group in regard to 1/18/11 meeting at PN," outlining the projects and benefits provided by the CFC. (PA-CFC00042970-974)

### **The Development of the CFC**

16. In 2006, the Port Authority Port Commerce Department began the process of developing and then implementing a fair user fee that would recoup the Port Authority's investment in port improvements in an even-handed manner. Attached hereto as Exhibits 12-13 are true and correct copies of Port Authority documents discussing and exploring user fees as a means of recouping the Port Authority's rail, road, and security investments (PA-CFC00045373-463) and (PA-CFC00043211-253).

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17. By 2008, the Port Authority's studies evolved, in part, into plans to proceed with implementation of a security fee that would be engineered to recover costs associated with federally mandated, post-9/11 security upgrades.

18. The Port Authority's studies further evolved into plans to implement a more comprehensive user fee structure that would allow the Port Authority to recoup the costs of rail and roadway improvements, in addition to post-9/11 security costs.

19. Prior to the adoption of the CFC, the Port Authority had been assessing an "Intermodal Container Lift" fee, also known as the "Capital Recovery Fee" (the "Rail Fee") that was \$57.50 in March 2011 when the CFC was first implemented, for each container that utilized the Port Authority's intermodal rail facilities, including the ExpressRail system.

20. Also prior to the adoption of the CFC, the Port Authority had been assessing a volume-based annual Container Terminal Subscription Fee (the "Truck Fee") in connection with the SeaLink trucker identification system used for the interchange of containers between truckers or trucking companies and container terminals subsequent to unloading from the vessel or before loading onto the vessel. Each terminal was assessed a fee ranging from \$2,500 to \$10,250 per calendar quarter based on each terminal's annual TEU volume.

21.

**REDACTED**

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REDACTED



22. In June 2010, the Port Authority proposed placing a cargo facility charge on all containers (loaded and empty), auto and bulk cargo passing through the Port, while simultaneously eliminating the Rail Fee and Truck Fee. Attached hereto as Exhibit 14 is a true and correct copy of a memorandum I drafted entitled "Rationale for a Cargo Facility Charge vs. the ExpressRail Intermodal Lift Fee," which discusses certain benefits of eliminating the Rail Fee and implementing the CFC. (PA-CFC00019299-19301).

23. The Port Authority determined that the imposition of a single fee rather than three (*i.e.*, a separate Rail Fee, Truck Fee and security fee) would streamline [the] fee collection process and more evenly and fairly distribute the costs of roadway, rail, and security improvements across cargo moving through the port. Attached hereto as Exhibit 15 is a true and correct copy of a memorandum, dated February 1, 2011, regarding the CFC, which discusses the elimination of the Rail Fee and the benefits of adopting a user fee. (PA-CFC00020998).

24. The amount of the CFC fee was derived by spreading the costs to be recovered over the projected cargo traffic for the twenty-five-year period ending in 2035.

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25. In calculating the CFC rates, the Port Commerce Department forecast the expected volume of cargo containers, non-containerized cargo and vehicles over that twenty-five-year period, and apportioned the unrecovered cost of the ExpressRail and the expected costs of the roadway projects, so that the costs of the rail and roadway projects as well as a percentage of the total cost of post-9/11 security upgrades would be reasonably and fairly assessed on cargo passing through the port's improved infrastructure.

26. The Port Commerce Department used a starting point of 25% of the security fee. **REDACTED**.

27. The CFC went into effect only after lengthy consideration and careful analysis by the Port Authority Port Commerce Department, which recognized the need to ensure that the contemplated fee would recoup the investment in port improvements in an even-handed manner

28. Before adopting the CFC, the Port Authority internally analyzed the benefits of the projects funded by the CFC to users of the port, and specifically to ocean common carriers that are generally responsible for the movement of cargo containers through the port. According to these studies, the CFC would provide needed road and rail capacity as well as make the port more environmentally sustainable and efficient by decreasing congestion on the port roadways and terminals. This increase in rail and road capacity is facilitated by removing trucks from the roadway and putting more containers on the rail instead, as well as increasing roadway capacity and mitigating the environmental impact of on-port idling caused by congestion. Attached hereto as Exhibit 16 is a true and correct copy of a Memorandum entitled "Cargo Facility



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Infrastructure Charge Marketing Plan & Strategy for Container Ocean Carriers,” which analyzes some of the benefits that projects funded by the CFC will confer on ocean common carriers. (PA-CFC11063-069).

29. In addition to internal analyses, the Port Authority engaged economics experts from Compass Lexecon to study the benefits from the Port Authority’s on-dock ExpressRail infrastructure projects to carriers primarily utilizing trucks for inland transportation, including the shift of a portion of the inland movement of cargo from truck to rail, and the attendant decrease in roadway congestion and truck waiting time. The report issued by Compass Lexecon in December 2010 concluded that the reduced roadway congestion resulting from the ExpressRail infrastructure projects reduced transportation costs per cargo container transported by truck far more than the amount of the CFC, and those benefits were likely to increase further as a result of additional traffic moving to ExpressRail because of the restructuring of the cost recovery fees. *See generally* Supplemental Declaration of Fredrick Flyer and Allan Shampine, dated Jan. 31, 2013, Ex. C.

30. The Port Authority filed its proposed revisions to the Tariff—which would allow it to assess a cargo facility charge on all cargo containers and non-containerized cargo transported through the port—with the Port Authority Board of Commissioners and made those revisions publicly available for two separate 30-day comment periods. Attached hereto as Exhibit 17 is a true and correct copy of a memorandum entitled “Cargo Facility Charge- Implementation Process / Issues to Date,” dated March 7, 2011, which describes the CFC implementation process. (PA-CFC00019099-101)

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31. Between December 2010 and February 2011, the Port Authority held numerous meetings with ocean carriers (including the Complainants), terminal operators and others to discuss the proposed Tariff, and provided multiple opportunities for comment that led to certain revisions to the CFC before final implementation. Attached hereto as Exhibit 18 is a true and correct copy of a memorandum summarizing one such meeting, in this case a meeting between the Port Authority and Complainants K Line, Hanjin, UASC, and NYK to discuss the CFC. (PA-CFC00019572-574).

32. The Port Authority revised the CFC to reflect comments from ocean common carriers and MTOs concerning the fee. In particular, the Port Authority agreed to generate monthly invoices for each individual ocean common carrier as opposed to having the terminal operators bill the ocean common carriers directly.

33. The CFC became effective on March 14, 2011, at which time the Port Authority eliminated the Rail Fee and the Truck Fee.

34. The CFC enables the Port Authority to recoup and finance the Port Authority's capital investment in the facilities, infrastructure, roadways, and intermodal transportation network projects and services, as well as the provision of security. These improvements and services allow carriers that use either leased or public terminal space at the port to move cargo containers and non-containerized cargo more quickly, safely, and efficiently through the port after the cargo containers and/or non-containerized cargo have been unloaded from the vessels en route to their final in-land destination (or for outbound cargo containers and/or non-containerized cargo, before they are loaded onto the berthed vessels). The investments and expenses that the CFC is designed to recoup are detailed in documents created contemporaneously with the consideration and

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adoption of the CFC. Attached hereto as Exhibits 19-21 are true and correct copies of some of the documents that were created around the time the Port Authority was analyzing user fees, which provide greater detail on the projects and investments the CFC is designed to recoup. (PA-CFC00042111-114, 42158-160), (PA-CFC00048773-786), and (PA-CFC00020902-00020908).

### **Text and Implementation of the CFC**

35. The CFC is assessed at the time that the cargo container or non-containerized cargo is loaded onto or unloaded from a vessel at the port.

36. For cargo containers, the CFC is invoiced to the carrier that is responsible for the cargo container, irrespective of whether that particular carrier's own vessel or another vessel provides the ocean transport. The carrier that is responsible for the particular cargo container is the carrier that has contracted and issued a bill of lading for the carriage of the cargo container, not the carrier that happens to own and/or operate the vessel transporting the cargo container.

37. Each carrier is individually billed for the CFC, regardless of whether the carrier's cargo containers are carried on a vessel it owns and operates or is being transported on another carrier's vessel under a vessel sharing agreement, slot charter or other arrangement. By placing the obligation to pay the CFC on the carrier that has taken contractual responsibility for the carriage of the goods, the CFC is assessed on the party most directly responsible for the movement of the cargo container from its point of origin, through the port, and onward to its final destination.

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38. If a carrier does not pay the invoiced CFC charges for two consecutive reporting periods (a "non-compliant carrier"), per Subrule 34-1220(3)(b), the Port Authority's practice is to contact both the non-compliant carrier and each private terminal operator to remind them of the outstanding balance. If the balance remains unpaid, the Tariff authorizes the Port Authority to issue a directive requiring all terminal operators either to cease service to the non-compliant carrier or to take financial responsibility for payment of that carrier's CFC charges. Thus, a non-compliant carrier's cargo containers may still be moved through the port where a terminal operator accepts financial responsibility for paying the CFC on the non-compliant carrier's behalf.

39. Only a non-compliant carrier, but not a vessel, risks being unable to move its cargo containers through the port by failing to pay the CFC. For example, a vessel owned by a non-compliant carrier is permitted in the port to load and unload the cargo containers of any compliant carriers that are being transported on the vessel. Likewise, a vessel owned by a compliant user that is carrying cargo containers of a non-compliant user and compliant users is also permitted in the port and can discharge and load the containers of any compliant users. But in any of these circumstances, the vessel itself is allowed to berth at the port.

40. Since the CFC's implementation on March 14, 2011, the Port Authority has not increased its rate

### **Complainants' Benefit from CFC-Funded Projects**

41. Given their central role in the movement of cargo through the port, Complainants benefit from the Port Authority's provision of facilities, infrastructure, roadways and intermodal transportation network as well as security that allow carriers

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that use either leased or public terminals at the port to move cargo containers and non-containerized cargo more quickly, safely, and efficiently. These services and benefits provided by the Port Authority are separate and distinct from any loading and unloading services performed by private MTOs and stevedores at leased and public terminals.

42. The additional port security funded by the CFC reduces the risk of damage to Complainants' property (including the cargo containers) and also reduces the risk of theft or sabotage of cargo, for which Complainants may become responsible to the cargo owners.

43. The Port Authority's construction of the on-dock ExpressRail, which is also funded by the CFC, has improved the efficiency with which Complainants can transport cargo containers through and beyond the port by rail, by eliminating the extra step of transporting cargo containers from the dock to the off-port railway. The availability of the ExpressRail, together with the expansion of the port's roadway capacity, also reduces congestion on port roadways, thereby reducing the costs associated with moving cargo containers and/or non-containerized cargo by truck.

44. The Port Authority's roadway projects, including widening certain areas, have reduced accidents which are costly not only to those directly involved, but also to other port users because of the traffic and congestion they create.

45. Transshipped containers, which are unloaded from one vessel and then loaded onto another vessel without ever leaving the port, represent a *de minimis* amount of the total volume of cargo containers that pass through the port. For example, in 2012, out of more than three million total cargo containers passing through the port, fewer than 650 containers were transshipped.

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### Efficiency of Levying the CFC against Carriers

46. Depending on the distance from the origin and/or destination point to the port, the cargo container might move by truck, rail, or a combination of the two before or after being loaded onto or unloaded from a vessel. Trying to account for the cargo container at any point other than when it is loaded or unloaded would increase the administrative burden, decrease the accuracy of assessing the fee, and increase the likelihood that the fee would be assessed unequally on cargo containers and non-containerized cargo.

47. By accounting for the cargo containers and/or non-containerized cargo when they are loaded onto or unloaded from a vessel, the Port Authority ensures that all cargo containers and non-containerized cargo that move through the port are counted (but not double counted), no matter how they are interchanged between the various transportation methods, and therefore all bear their fair share.

48. In light of existing business relationships between the MTOs and the ocean common carriers, the most efficient, least disruptive way for the Port Authority to collect the CFC on a per container basis is to have the MTOs bill the ocean common carriers and remit amounts received to the Port Authority.

49. The MTOs—which already had a process in place for invoicing and collecting fees from the carriers when the CFC went into effect—track each carrier's loading and unloading activities at their terminals and enable the Port Authority to collect the CFC efficiently. The MTOs send a monthly Vessel Activity Report to the Port Authority detailing each carrier's activity at their terminals that is subject to the CFC.

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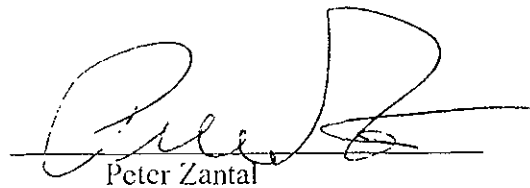
Monthly invoices are then issued by the Port Authority to private marine terminal operators for each of the carriers calling at that terminal based on the prior month's Report. The MTO then collects the CFC from each carrier incurring the charge and forwards the payments to the Port Authority. By using the existing administrative structures already in place at the MTOs to account for and collect the CFC, the Port Authority saves administrative expenses, which means that it does not need to increase the CFC rate to cover the higher administrative costs of a less efficient system.

50. For example, the Port Authority would have to charge a higher CFC rate to cover the higher administrative costs of implementing a system to charge beneficial cargo owners ("BCOs") directly through a PierPASS-type system. Attached hereto as Exhibit 22 is a true and correct copy of a Port Authority memorandum, dated May 4, outlining some of the challenges associated with implementing a system to charge BCOs. (PA-CFC00020511-515) The Port Commerce Department's analysis and investigation of the feasibility and costs of implementing a PierPASS-type system revealed that: (1) the Port Authority did not have the infrastructure to implement such a system, (2) development of such a system would be costly, and (3) procurement and a full roll-out of such a system could take significant time (*see, e.g.*, Ex. 22 ("PCD in conjunction with the Procurement Department and the Technical Services Division, estimates implementation may actually require a minimum of 24 months to complete the procurement and roll out of the needed system for the Port Authority.")) In order to collect the CFC from the tens of thousands of BCOs that use the port, the Port Authority would have to invest millions of dollars more in infrastructure improvements, and millions more would be required annually to implement, maintain and enforce the system.

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I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on February 1, 2013, in New York, NY.



Peter Zantal



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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon the person listed below in the matter indicated, a copy to each such person.

<p><b><u>Via Federal Express:</u></b></p> <p>John P. Meade "K" Line America, Inc. 6009 Bethlehem Road Preston, MD 21655</p> <p>Paul M. Keane Cichanowicz, Callan, Keane, Vengrow &amp; Textor, LLP 61 Broadway, Suite 3000 New York, NY 10006</p> <p>Matthew J. Thomas Reed Smith LLP 1301 K Street, N W Washington, DC 20005</p>	<p>Dated at New York, NY this 1st day of February, 2013</p>
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Camille A. George

## **EXHIBIT 1**

**AGREEMENT**

**between**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**and**

**GLOBAL TERMINAL & CONTAINER SERVICES, LLC**

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(c) The obligation of Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property in or near the Marine Container Terminal Facility, and proper operation by Lessee. Such provisions provided for herein are not to be construed as a submission by the Port Authority to the application to itself of such requirements. The Port Authority, after written notice to Lessee and the expiration of any applicable cure period, shall have the right to cause the Lessees, the Premises, and/or the Marine Container Terminal to come into compliance with the legal requirements to the extent the Port Authority reasonably determines that the Lessee has failed to do so; provided Lessee is not actively contesting such requirement in accordance with paragraph (d) below. Lessee shall indemnify the Port Authority for any costs incurred in connection with bringing Lessee, the Premises and or the Marine Container Terminal Facility into compliance or with respect to any claims or damages as a result of Lessees failure to comply with legal requirements.

(d) Lessee, at its expense, after notice to the Port Authority; may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any legal requirement, provided that: (a) the Port Authority shall not be subject to civil or criminal penalty or to prosecution for a crime, nor shall the Marine Container Terminal Facility or any part thereof be subject to being condemned or vacated, or subject to any lien or encumbrance, by reason of non-compliance or otherwise by reason of such contest; (b) before the commencement of such contest, Lessee shall furnish to the Port Authority a letter of credit or surety bond satisfactory to the Port Authority, in form substance and amount, and shall indemnify the Port Authority against the cost of such compliance and liability resulting from or incurred in connection with such contest or non-compliance (including the costs and expenses in connection with such context); and (c) Lessee shall keep the Port Authority regularly advised as to the status of such proceedings. The Port Authority shall be deemed subject to prosecution for a crime if the Port Authority or any of its Commissioners, officers, employees or agents is charged with a crime of any kind whatsoever unless such charge is withdrawn five (5) days before such party is required to plead or answer thereto.

#### Section 16. Rules and Regulations

(a) Lessee covenants and agrees to observe and obey, (and to compel its officers, employees and others on the Premises with its consent, to observe and obey) the rules and regulations of the Port Authority now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the governing of the conduct and operations of Lessee as may from time to time during the Term be promulgated by the Port Authority, and applicable to substantially all marine container terminal operators or users of such facilities owned or leased by the Port Authority, for reasons of safety, health, or preservation of property, for the maintenance of the good and orderly appearance of the Premises, for the safe or efficient operation of the Marine Container Terminal Facility or (as further described in paragraph (d) below) for the reimbursement of the Port Authority of capital or operating costs incurred or anticipated in connection with improvements benefiting users of the Port Authority facilities. The

Port Authority agrees that, except in cases of emergency, it will give notice to Lessee of every such further rule or regulation at least ten (10) days before Lessee shall be required to comply therewith.

(b) For purposes of this Agreement, the rules and regulations now in effect are set forth in the Port Authority's tariff, as incorporated in FMC SCHEDULE PA-10, as the same or any successor tariff may be amended from time to time (the "Tariff"). A copy of the Tariff can be found on the Port Authority's website, [www.panynj.gov](http://www.panynj.gov).

(c) The Port Authority hereby agrees to apply the rules and regulations set forth in the Tariff and any further rule or regulation hereafter promulgated by the Port Authority equitably and without discrimination against Lessee and all other similarly situated tenants of the Port Authority at any marine container terminal facility.

(d) Lessee covenants and agrees that it shall collect user and security fees from users of the Marine Container Terminal Facility on behalf of the Port Authority and remit such fees to the Port Authority less an administrative fee to be approved by the Port Authority which Lessee shall retain, in the event that such fees are concurrently imposed on substantially all leased berth facilities from the Port Authority.

(e) No statement or provision in the rules and regulations of the Port Authority shall be deemed a representation or promise by the Port Authority that the services or privileges described shall be or remain available, or that the charges, prices, rates or fees stated therein shall be or remain in effect throughout the Term, all of the same being subject to change by the Port Authority from time to time whenever it deems a change advisable.

#### Section 17 Method of Operation

(a) In the performance of its obligations hereunder and in the use of the Premises, Lessee shall use reasonable efforts to conduct its operations in an orderly and proper manner consistent with the operation of an industrial property functioning as a marine container terminal, so as not to unnecessarily annoy, disturb or be offensive to others near or at the Premises, and if requested by Port Authority in writing, as soon as reasonably possible Lessee shall remove the cause of any reasonable objection made by the Port Authority relative to the improper conduct of any of the employees of Lessee or of any others on the Premises to the extent Lessee is legally able to do so.

(b) Lessee shall not allow any garbage, debris or other waste materials (whether solid or liquid) to collect or accumulate on the Premises outside of what is ordinary and customary for a property of this type and Lessee shall remove from the Premises all garbage, debris and other waste materials (whether solid or liquid) arising out of its operations hereunder on a regular basis. Any such material which may be temporarily stored shall be kept in suitable waste receptacles, the same to be made of metal and equipped with tight-fitting covers, and in any case to be designed and

## **EXHIBIT 2**



AGREEMENT OF LEASE

EP-249

between

THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

and

MAHER TERMINALS, INC.  
(Lessee)

Dated as of October 1, 2000

CONFORMED COPY

*cm*

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Schedule A  
Schedule E  
Schedule I

Exhibit A  
Exhibit A-1  
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Exhibit A-4  
Exhibit Y  
Exhibit I

form, substance and amount, and shall indemnify the Port Authority against the cost of such compliance and liability resulting from or incurred in connection with such contest or non-compliance (including the costs and expenses in connection with such contest); and (c) the Lessee shall keep the Port Authority regularly advised as to the status of such proceedings. The Port Authority shall be deemed subject to prosecution for a crime if the Port Authority or any of its Commissioners, officers, employees or agents is charged with a crime of any kind whatever unless such charge is withdrawn five (5) days before such party is required to plead or answer thereto.

#### Section 12. Rules and Regulations

(a) The Lessee covenants and agrees to observe and obey (and to compel its officers, employees and others on the Premises with its consent to observe and obey) the Rules and Regulations of the Port Authority (the "Rules and Regulations") now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the government of the conduct and operations of the Lessee as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, or preservation of property, or for the maintenance of the good and orderly appearance of the Premises, or for the safe or efficient operation of the Facility. The Port Authority agrees that, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation at least five (5) days before the Lessee shall be required to comply therewith.

(b) If a copy of the Rules and Regulations is not attached as Exhibit R to this Agreement, then the Port Authority will notify the Lessee thereof either by delivery of a copy, or by publication in a newspaper published in the Port of New York District, or by making a copy available at the office of the Secretary of the Port Authority.

(c) No statement or provision in the Rules and Regulations shall be deemed a representation or promise by the Port Authority that the services or privileges described shall be or remain available, or that the charges, prices, rates or fees herein shall be or remain in effect throughout the letting, all of the same being subject to change by the Port Authority from time to time whenever it deems a change advisable.

#### Section 13. Method of Operation

(a) In the performance of its obligations hereunder and in the use of the Premises, the Lessee shall conduct its

## **EXHIBIT 3**

MLPF-11551.1

Lease No. EP-251

AGREEMENT

between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

and

MAHER TERMINALS, INC.

Date of September 1, 2001

CONFORMED COPY

*Clme*  
Leasing Files

PA-CFC00053837

MLPF 4473.1

THIS AGREEMENT OF LEASE, made as of the 1st day of September, 2001, by and between THE PORT AUTHORITY of NEW YORK and NEW JERSEY (hereinafter called "the Port Authority") a body corporate and politic created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America and having an office and place of business at One World Trade Center, New York, New York 10048, and MAHER TERMINALS, INC., a New Jersey corporation (hereinafter called "the Lessee") with an office and place of business at One Journal Square Plaza, Jersey City, New Jersey 07306, whose representative is M. Brian Maher,

WITNESSETH, That,

The Port Authority and the Lessee, for an in consideration of the covenants and mutual agreements hereinafter contained, do hereby agree as follows:

ARTICLE I The Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority, at the Elizabeth-Port Authority Marine Terminal (sometimes hereinafter called "the Facility"), in the City of Elizabeth, County of Union and State of New Jersey, the following described premises:

the open area and the enclosed spaces shown in diagonal crosshatching on the sketch attached hereto, hereby made a part hereof and marked "Exhibit A".

together with the buildings, structures, fixtures, improvements, and other property, if any, of the Port Authority located or to be located therein or thereon, the said open area and enclosed spaces, buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter called "the premises". The Port Authority and the Lessee hereby acknowledge that the foregoing premises constitute non-residential property

ARTICLE II The term of the letting shall commence at 12:01 o'clock A.M. on September 1, 2001 and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on August 31, 2015

ARTICLE III The Lessee shall pay to the Port Authority as set forth in Special Endorsements No. 2 and No. 3 hereto

ARTICLE IV The Lessee shall use the premises for the following only, and for no other purpose whatsoever

As set forth in Special Endorsement No. 1 hereto



ARTICLE V. The Port Authority and the Lessee agree that the letting shall be subject to and in accordance with, and the Lessee and the Port Authority each for itself agrees that it will perform all the obligations imposed upon it by, the Terms and Conditions (Sections 1 through 30) hereof and the following endorsements and attachments, all annexed hereto and made a part hereof, with the same effect as if the same were set forth herein in full:

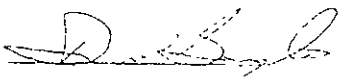
TITLE	NUMBER	DATE
Services	Standard Endorsement No. L5.1	10/6/75
Elizabeth-Port Authority Marine Terminal	Standard Endorsement No. L19.11	10/6/73
Insurance	Standard Endorsement No. L21.1	3/25/82
Abatement	Standard Endorsement No. L27.4	10/6/68
Special Endorsements		
Space Plan - Exhibit A		
Schedule naming Rules, Regulations, Rates and Charges applying at Port Authority Marine Terminals - Exhibit R		

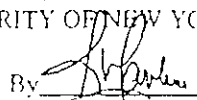
ARTICLE VI. The within, together with the said Terms and Conditions, endorsements and attachments, constitutes the entire agreement of the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended except by written instrument duly executed by the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, the Port Authority and the Lessee hereto have executed these presents as of the date first above written.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

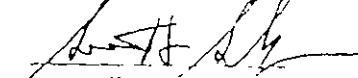
ATTEST:

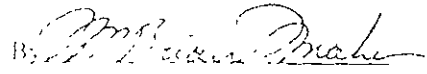
  
 Daniel D. Bergstein  
 Secretary  
 The Port Authority of NY & NJ

By   
 RICHARD W. LARRABEE  
 Title DIRECTOR, PORT COMMERCE DEPT.  
 (Seal)



MAHER TERMINALS, INC

ATTEST:

  
 Secretary

By   
 Title Chairman and Chief Executive Officer  
 (Corporate Seal)

APPROVED:

FORM	TERMS
	

## TERMS AND CONDITIONS

### SECTION 1. *Ingress and Egress*

The Lessee shall have the right of ingress and egress between the premises and the city streets outside the Facility. Such right shall be exercised by means of such pedestrian or vehicular ways to be used in common with others having rights of passage within the Facility, as may from time to time be designated by the Port Authority for the use of the public. The use of any such way shall be subject to the rules and regulations of the Port Authority which are now in effect or which may hereafter be promulgated for the safe and efficient operation of the Facility. The Port Authority may, at any time, temporarily or permanently close, or consent to or request the closing of, any such way or any other area, in or near the Facility presently or hereafter used as such, so long as a means of ingress and egress as provided above remains available to the Lessee. The Lessee hereby releases and discharges the Port Authority, and all municipalities and other governmental authorities, and their respective successors and assigns, of and from any and all claims, demands, or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any way or other area, whether within or outside the Facility. The Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the premises or in any streets, ways and walks near the premises.

### SECTION 2. *Governmental and Other Requirements*

(a) The Lessee shall procure from all governmental authorities having jurisdiction of the operations of the Lessee hereunder, all licenses, certificates, permits or other authorization which may be necessary for the conduct of such operations.

(b) The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to its operations or the use and occupancy of the premises hereunder, and in addition shall make all improvements, repairs and alterations which may be so required.

(c) The obligation of the Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property in or near the Facility and proper operation by the Lessee. Such provision herein is not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

### SECTION 3. *Rules and Regulations*

(a) The Lessee covenants and agrees to observe and obey (and to compel its officers, employees and others on the premises with its consent to observe and obey) the Rules and Regulations of the Port Authority as now supplemented and now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the government of the conduct and operations of the Lessee as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, or preservation of property, or for the maintenance of the good and orderly operation of the premises, or for the safe or efficient operation of the Facility. The Port Authority agrees that except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation at least five (5) days before the same shall be required to comply therewith.

(b) If a copy of the Rules and Regulations is not attached, then the Port Authority will deliver to the Lessee thereof by either delivery of a copy or by publication in a newspaper published in the Port of New York District or by other means a copy available at the office of the Port Authority.

(c) No notice of or provision of Rules and Regulations shall be deemed to be promulgated or amended by the Port Authority that the Lessee is not concerned shall be or remain available, or that the Lessee is not bound by or is not subject to the same, until the Lessee has been notified in writing of the same by the Port Authority from time to time as may be required by such change, as advisable.

SECTION 4. *Method of Operation*

(a) In the performance of its obligations hereunder and in the use of the premises the Lessee shall conduct its operations in an orderly and proper manner, so as not to annoy, disturb or be offensive to others near the premises or at the Facility and within twenty four hours remove the cause of any objection made by the Port Authority relative to the demeanor, conduct or appearance of any of the employees of the Lessee or others on the premises with the consent of the Lessee

(b) The Lessee shall not allow any garbage, debris or other waste materials (whether solid or liquid) to collect or accumulate on the premises and the Lessee shall remove from the premises and from the Facility all garbage, debris and other waste materials (whether solid or liquid) arising out of its operations hereunder. Any such material which may be temporarily stored shall be kept in suitable waste receptacles, the same to be made of metal and equipped with tight-fitting covers, and in any case to be designed and constructed to contain safely the waste material placed by the Lessee therein. The receptacles shall be provided and maintained by the Lessee and shall be kept covered except when being filled or emptied. The Lessee shall use extreme care when effecting removal of all such material, shall effect such removal at such times and by such means as first approved by the Port Authority, and shall in no event make use of any facilities or equipment of the Port Authority except with the prior consent thereof

(c) The Lessee shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the utility, mechanical, electrical and other systems installed or located anywhere at the Facility.

(d) The Lessee shall not commit any nuisance or permit its employees or others on the premises with its consent to commit or create or continue or tend to create any nuisance on the premises or in or near the Facility

(e) The Lessee shall take all reasonable measures to keep the sound level of its operations as low as possible and to eliminate vibrations tending to damage the premises or the Facility or any part thereof

(f) The Lessee shall not cause or permit to be caused or produced upon the premises, to permeate the same or to emanate therefrom, any unusual, noxious or objectionable smokes, gases vapors or odors

(g) The Lessee shall not do or permit to be done any act or thing at the Facility which shall or might subject the Port Authority to any liability or responsibility for injury to any person or persons or damage to any property

(h) The Lessee shall not overload any floor, roof, land surface, bulkhead, pavement, landing, pier or wharf at the Facility, and shall repair, replace or rebuild any such, including but not limited to supporting members, damaged by overloading. For the purpose of this paragraph (h), any placing on the premises of a load per square foot in excess of the number of pounds per square foot, if any, stated in any Special Endorsement hereto shall constitute overloading, but an overload may be created by a lesser weight. Nothing in this paragraph or elsewhere in this Agreement shall be or be construed to be or be intended by the Port Authority of the weight capacity of any part of the Facility

(i) The Lessee shall not do or permit to be done any act or thing upon the premises or at the Facility which (1) will interfere or conflict with any fire insurance policies covering the premises or any part thereof, or the Facility, or any part thereof, or (2) which, in the opinion of the Port Authority, may constitute an extra-hazardous condition so as to require an extension of coverage or reimbursement on the Facility or any part thereof or on the contents of any structure thereon. The Lessee shall promptly observe, comply with and execute the provisions of any and all fire codes, laws, ordinances, rules and regulations, requirements and standards of the National Fire Protection Association, of any fire department located in New York, of the Fire Department Office of New York, or, at the premises, of the Fire Department of the Port Authority, or of any other board or organization, which may have similar functions, which may or may not apply to the operations of the Lessee on the premises, and shall be subject to and shall conform with the provisions of this Agreement relating

## **EXHIBIT 4**

*Rep. Copy*

AGREEMENT

between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

and

HOWLAND HOOK CONTAINER TERMINAL, INC.

Commenced  
Dec 10, 1995 date

PORT DEPARTMENT  
CONFORMED COPY

Dated as of June 30, 1993

Lease No. HHT-4

THIS AGREEMENT OF LEASE, made as of the 30th day of June, 1995, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority"), a body corporate and politic created by Compact between the States of New Jersey and New York, with the consent of the Congress of the United States of America, and having an office and place of business at One World Trade Center, New York, New York 10048; and HOWLAND HOOK CONTAINER TERMINAL, INC. (hereinafter called "the Lessee"), a corporation organized and existing under the laws of the State of New York and having an office and place of business at ~~90 Washington Street~~, New York, New York 10005, whose representative is: Carmine Ragucci.

*Wall Street Plaza*  
*R* WITNESSETH, THAT:

The Port Authority and the Lessee, for and in consideration of the covenants and agreements hereinafter contained, hereby agree as follows:

Section 1. Letting

The Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority, at the Howland Hook Marine Terminal (sometimes hereinafter called "the Facility" or "the marine terminal"), in the Borough of Staten Island, in the County of Richmond and the State of New York, the following: the open area shown in stipple, the enclosed spaces shown in diagonal crosshatching, and the water area shown in the color red, all as so shown on a sketch hereto attached, hereby made a part hereof, and marked "Exhibit A", and as further described in the schedule of metes and bounds attached hereto, hereby made a part hereof and marked "Schedule A", together with the buildings, structures, fixtures, improvements and other property, if any, owned or leased by the Port Authority located or to be located or constructed therein or thereon, the said open area, enclosed spaces, and water area, buildings, structures, fixtures, improvements and other property of the Port Authority being hereinafter collectively called "the premises", and the water area shown in red being hereinafter sometimes called "the berthing area". All references in this Agreement to the Facility shall be deemed to refer to the premises, it being understood that for purposes of this Agreement the Facility, and the premises constitute the same property. The parties agree that the premises constitute non-residential property. The parties further agree that in the event of any discrepancy between the general outline of the Facility shown on Exhibit A and the description of metes and bounds on Schedule A, the description of metes and bounds on Schedule A shall control.

cost and expense shall make all improvements, repairs and alterations (structural and non-structural) which may be so required.

(c) The obligation of the Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property in or near the Facility, and proper operation by the Lessee. Such provision herein is not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

## Section 12. Rules and Regulations

(a) The Lessee covenants and agrees to observe and obey (and to compel its officers, employees and others at the Facility with its consent to observe and obey) the Rules and Regulations of the Port Authority now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the government of the conduct and operations of the Lessee as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, or preservation of property, or for the maintenance of the good and orderly appearance of the Facility, or for the safe or efficient operation of the Facility. The Port Authority agrees that, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation at least five (5) days before the Lessee shall be required to comply therewith.

(b) If a copy of the Rules and Regulations is not attached as Exhibit R to this Agreement, then the Port Authority will notify the Lessee thereof either by delivery of a copy, or by publication in a newspaper published in the Port of New York District, or by making a copy available at the office of the Secretary of the Port Authority.

(c) No statement or provision in the Rules and Regulations shall be deemed a representation or promise by the Port Authority that the services or privileges described shall be or remain available, or that the charges, prices, rates or fees stated therein shall be or remain in effect throughout the letting, all of the same being subject to change by the Port Authority from time to time whenever it deems a change advisable.

## Section 13. Method of Operation

(a) In the performance of its obligations hereunder and in the use of the Facility, the Lessee shall conduct its operations in an orderly and proper manner, so as not to annoy, disturb or be offensive to others near or at the Facility, and within twenty-four (24) hours the Lessee shall remove the cause

## **EXHIBIT 5**



THE PORT AUTHORITY  
OF  
NEW YORK AND NEW JERSEY

---

AGREEMENT OF LEASE

between

THE PORT AUTHORITY  
OF  
NEW YORK AND NEW JERSEY

and

HOWLAND HOOK CONTAINER TERMINAL, INC.

Effective Date: May 31, 2004

CONFORMED COPY

*CME*  
Leasing Files

PA-CFC00054575

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16.	Termination	10
17.	Right of Re-entry	12
18.	Waiver of Redemption	12
19.	Survival of the Obligations of the Lessee	12
20.	Reletting by the Port Authority	12
21.	Remedies to be Nonexclusive	13
22.	Surrender	13
23.	Acceptance of Surrender of Lease	13
24.	Notices	13
25.	General	14
26.	Premises	15
27.	Postponement	15
28.	Force Majeure	16
29.	Brokerage	16
30.	Non-liability of Individuals	16

THIS AGREEMENT OF LEASE, made as of the 31st day of March, 2004, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter called "the Port Authority") a body corporate and politic created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America and having an office and place of business at 225 Park Avenue South, New York, New York 10003 and HOWLAND HOOK CONTAINER TERMINAL, INC., a New York corporation (hereinafter called "the Lessee") with an office and place of business at 300 Western Avenue, Staten Island, New York 10303, whose representative is: James J. Devine;

WITNESSETH, That:

The Port Authority and the Lessee, for and in consideration of the covenants and mutual agreements hereinafter contained, do hereby agree as follows:

ARTICLE I. The Port Authority hereby lets to the Lessee and the Lessee hereby hires and takes from the Port Authority, at the Facility (as defined in paragraph (j) of Section 25 of the Terms and Conditions hereof, as amended by subparagraph (h) of Paragraph 15 of the Special Endorsements attached to this Agreement) in the City of New York, County of Richmond, State of New York, the enclosed area shown in diagonal cross hatching (hereinafter sometimes called "the Building") and the open area of land shown in stipple on the drawing attached hereto, hereby made a part hereof and marked "Exhibit A" together with the buildings, structures, fixtures, improvements, and other property, if any, of the Port Authority located or to be located therein or thereon, the said areas, buildings (including, without limitation thereto, the Building), structures, fixtures, improvements and other property of the Port Authority being hereinafter called "the premises". The Port Authority and the Lessee hereby acknowledge that the foregoing premises constitute non-residential real property

ARTICLE II. The term of the letting shall commence at 12:01 o'clock A.M. on April 1, 2004, said date being hereinafter called the "Commencement Date" and, unless sooner terminated, shall expire at 11:59 o'clock P.M. on December 31, 2019.

ARTICLE III. The Lessee shall pay a basic rental as set forth in Paragraph 1 of the Special Endorsements attached to this Agreement.

ARTICLE IV. The Lessee shall use and occupy the premises for the following purposes only, and for no other purpose whatsoever: the enclosed area shown in diagonal cross hatching on Exhibit A for the receipt, handling, warehousing, repackaging and distribution of waterborne general cargo incident to the transportation of cargo transported to or from the Facility by seagoing vessels; and the open area shown in stipple on Exhibit A for the parking of motor vehicles, trailers and semi-trailers owned or operated by the Lessee, by employees of the Lessee or by those doing business with it at the Facility for the purposes set forth in this Article or at the premises under the Other Lease (as defined in Paragraph 11 of the Special Endorsements attached to this Agreement) for the purposes set forth in Section 8 thereof.

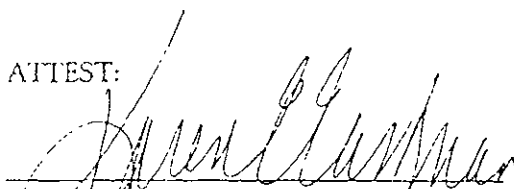
ARTICLE V. The Port Authority and the Lessee agree that the letting shall be subject to and in accordance with, and the Lessee and the Port Authority each for itself agrees that it will perform all the obligations imposed upon it by, the Terms and Conditions (Sections 1 through 30) hereof and the following endorsements and attachments, all annexed hereto and made a part hereof, with the same effect as if the same were set forth herein in full:

TITLE	NUMBER	DATE
Late Charges	Standard Endorsement No. L8.1	7/30/82
Special Endorsements		
Space Plan	Exhibit A	4/1/03
Space Plan	Exhibit A-1	8/1/04
Space Plan	Exhibit B	4/1/03

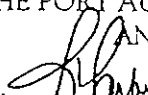
ARTICLE VI. The within, together with the said Terms and Conditions, endorsements and attachments, constitutes the entire agreement of the Port Authority and the Lessee on the subject matter, and may not be changed, modified, discharged or extended except by written instrument duly executed by the Port Authority and the Lessee. The Lessee agrees that no representations or warranties shall be binding upon the Port Authority unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, the Port Authority and the Lessee hereto, have executed these presents as of the date first above written.


ATTEST:

  
(Seal) **SECRETARY**

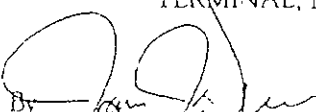
THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY

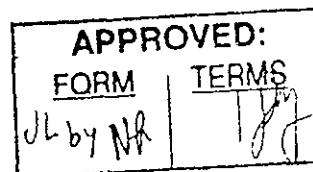
By   
Title RICHARD M. LARRABEE  
DIRECTOR, PORT COMMERCE DEPT.

ATTEST.

  
(Corporate Seal)

HOWLAND HOOK CONTAINER  
TERMINAL, INC.

By   
Title President



## TERMS AND CONDITIONS

### SECTION 1. *Ingress and Egress*

The Lessee shall have the right of ingress and egress between the premises and the city streets outside the Facility. Such right shall be exercised by means of such pedestrian or vehicular ways to be used in common with others having rights of passage within the Facility, as may from time to time be designated by the Port Authority for the use of the public. The use of any such way shall be subject to the rules and regulations of the Port Authority which are now in effect or which may hereafter be promulgated for the safe and efficient operation of the Facility. The Port Authority may, at any time, temporarily or permanently close, or consent to or request the closing of, any such way or any other area at, in or near the Facility presently or hereafter used as such, so long as a means of ingress and egress as provided above remains available to the Lessee. The Lessee hereby releases and discharges the Port Authority, and all municipalities and other governmental authorities, and their respective successors and assigns, of and from any and all claims, demands, or causes of action which the Lessee may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any way or other area, whether within or outside the Facility. The Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the premises or in any streets, ways and walks near the premises.

### SECTION 2. *Governmental and Other Requirements*

(a) The Lessee shall procure from all governmental authorities having jurisdiction of the operations of the Lessee hereunder, all licenses, certificates, permits or other authorization which may be necessary for the conduct of such operations.

(b) The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain or apply to its operations or the use and occupancy of the premises hereunder, and in addition shall make all improvements, repairs and alterations which may be so required.

(c) The obligation of the Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property in or near the Facility and proper operation by the Lessee. Such provision herein is not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

### SECTION 3. *Rules and Regulations*

(a) The Lessee covenants and agrees to observe and obey (and to compel its officers, employees and others on the premises with its consent to observe and obey) the Rules and Regulations of the Port Authority as now supplemented and now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the government of the conduct and operations of the Lessee as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, or preservation of property, or for the maintenance of the good and orderly appearance of the premises, or for the safe or efficient operation of the Facility. The Port Authority agrees that, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation at least five (5) days before the Lessee shall be required to comply therewith.

(b) If a copy of the Rules and Regulations is not attached, then the Port Authority will notify the Lessee thereof by either delivery of a copy, or by publication in a newspaper published in the Port of New York District or by making a copy available at the office of the Secretary of the Port Authority.

(c) No statement or provision in the said Rules and Regulations shall be deemed a representation or promise by the Port Authority that the services or privileges described shall be or remain available at the charges, prices, rates or fees stated therein shall be or remain in effect throughout the letting, all of the same being subject to change by the Port Authority from time to time whenever it deems a change advisable.

**SECTION 4. *Method of Operation***

(a) In the performance of its obligations hereunder and in the use of the premises the Lessee shall conduct its operations in an orderly and proper manner, so as not to annoy, disturb or be offensive to others near the premises or at the Facility and within twenty four hours remove the cause of any objection made by the Port Authority relative to the demeanor, conduct or appearance of any of the employees of the Lessee or others on the premises with the consent of the Lessee.

(b) The Lessee shall not allow any garbage, debris or other waste materials (whether solid or liquid) to collect or accumulate on the premises and the Lessee shall remove from the premises and from the Facility all garbage, debris and other waste materials (whether solid or liquid) arising out of its operations hereunder. Any such material which may be temporarily stored shall be kept in suitable waste receptacles, the same to be made of metal and equipped with tight-fitting covers, and in any case to be designed and constructed to contain safely the waste material placed by the Lessee therein. The receptacles shall be provided and maintained by the Lessee and shall be kept covered except when being filled or emptied. The Lessee shall use extreme care when effecting removal of all such material, shall effect such removal at such times and by such means as first approved by the Port Authority, and shall in no event make use of any facilities or equipment of the Port Authority except with the prior consent thereof.

(c) The Lessee shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the utility, mechanical, electrical and other systems installed or located anywhere at the Facility.

(d) The Lessee shall not commit any nuisance or permit its employees or others on the premises with its consent to commit or create or continue or tend to create any nuisance on the premises or in or near the Facility.

(e) The Lessee shall take all reasonable measures to keep the sound level of its operations as low as possible and to eliminate vibrations tending to damage the premises or the Facility or any part thereof.

(f) The Lessee shall not cause or permit to be caused or produced upon the premises, to permeate the same or to emanate therefrom, any unusual, noxious or objectionable smokes, gases vapors or odors.

(g) The Lessee shall not do or permit to be done any act or thing at the Facility which shall or might subject the Port Authority to any liability or responsibility for injury to any person or persons or damage to any property.

(h) The Lessee shall not overload any floor, roof, land surface, bulkhead, pavement, landing, pier or wharf at the Facility, and shall repair, replace or rebuild any such, including but not limited to supporting members, damaged by overloading. For the purpose of this paragraph (h), any placing on the premises of a load per square foot in excess of the number of pounds avoirdupois, if any, stated in any Special Endorsement hereto shall constitute overloading, but an overload may be created by a lesser weight. Nothing in this paragraph or elsewhere in this Agreement shall be or be construed to be a representation by the Port Authority of the weight capacity of any part of the Facility.

(i) The Lessee shall not do or permit to be done any act or thing upon the premises or at the Facility which (1) will invalidate or conflict with any fire insurance policies covering the premises or any part thereof, or the Facility, or any part thereof or (2) which, in the opinion of the Port Authority, may constitute an extra-hazardous condition, so as to increase the risks normally attendant upon the operations permitted by this Agreement or (3) which will increase the rate of any fire insurance, extended coverage or other insurance on the Facility or any part thereof or on the contents of any building thereon. The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the National Fire Protection Association and, if the premises are located in New York, of the Insurance Services Office of New York, or, if the premises are located in New Jersey, of the Insurance Services Office of New Jersey, or of any other board or organization exercising or which may exercise similar functions, which may pertain to the operations of the Lessee on the premises, and the Lessee shall, subject to and in accordance with the provisions of this Agreement relating

## **EXHIBIT 6**

PCL

Lease No. L-PN-264

201132

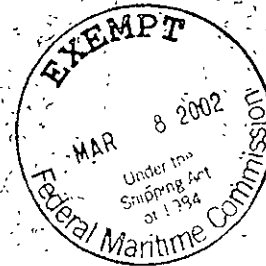
AGREEMENT

between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

and

PORT NEWARK CONTAINER TERMINAL LLC



Dated as of December 1, 2001

CONFORMED COPY



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(c) The obligation of the Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property in or near the Facility, and proper operation by the Lessee. Such provision herein is not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

#### Section 12 Rules and Regulations

(a) The Lessee covenants and agrees to observe and obey (and to compel its officers, employees and others on the premises with its consent to observe and obey) the Rules and Regulations of the Port Authority now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the government of the conduct and operations of the Lessee as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, or preservation of property, or for the maintenance of the good and orderly appearance of the premises, or for the safe or efficient operation of the Facility. The Port Authority agrees that, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation at least ten (10) days before the Lessee shall be required to comply therewith.

(b) For purposes of this Agreement, the Rules and Regulations now in effect are set forth in the Port Authority's tariff, as incorporated in FMC SCHEDULE PA-10, as the same or any successor tariff may be amended from time to time ("the Tariff"). If a copy of the Tariff is not attached as Exhibit R to this Agreement, then the Port Authority will notify the Lessee thereof either by delivery of a copy, or by publication in a newspaper published in the Port of New York District, or by making a copy available at the office of the Secretary of the Port Authority.

(c) No statement or provision in the Rules and Regulations shall be deemed a representation or promise by the Port Authority that the services or privileges described shall be or remain available, or that the charges, prices, rates or fees stated therein shall be or remain in effect throughout the letting, all of the same being subject to change by the Port Authority from time to time whenever it deems a change advisable.

#### Section 13 Method of Operation

In the performance of its obligations hereunder and in the use of the premises, the Lessee shall conduct its operations in an orderly and proper manner so as not to annoy, disturb or be offensive to others near the premises or at the Facility, and as soon as reasonably possible the Lessee shall

## **EXHIBIT 7**

**CONFIDENTIAL MATERIALS EXCLUDED**

## **EXHIBIT 8**

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## **EXHIBIT 9**

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## **EXHIBIT 11**

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## **EXHIBIT 18**

**CONFIDENTIAL MATERIALS EXCLUDED**



## **EXHIBIT 19**

# THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

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**MINUTES of the Meeting of The Port Authority of New York and New Jersey held Tuesday,  
December 7, 2010 at 225 Park Avenue South, City, County and State of New York**

**PRESENT:**

**NEW JERSEY**

Hon. Anthony R. Coscia, Chairman  
Hon. Virginia S. Bauer  
Hon. Raymond M. Pocino  
Hon. Anthony J. Sartor  
Hon. David S. Steiner

**NEW YORK**

Hon. Stanley E. Grayson, Vice-Chairman  
Hon. H. Sidney Holmes III  
Hon. Jeffrey A. Moerdler  
Hon. Henry R. Silverman

Christopher O. Ward, Executive Director  
William Baroni, Jr., Deputy Executive Director  
Darrell B. Buchbinder, General Counsel  
Karen E. Eastman, Secretary

Denise M. Berger, Deputy Director, Engineering  
Steven A. Borrelli, General Manager, Port Property and Finance, Port Commerce  
Ernesto L. Butcher, Chief Operating Officer  
Rosemary Chiricolo, Assistant Director, Management and Budget  
James N. Colangelo, Supervising Financial Analyst, Management and Budget  
Steven J. Coleman, Assistant Director, Media Relations  
Harry Czinn, Senior Project Manager, Management and Budget  
Michael P. DePallo, Director, Rail Transit  
Claudia Dickey, Assistant Director, Public Safety  
Gretchen P. DiMarco, Special Assistant to the Deputy Executive Director  
John J. Drobny, Director, Security Projects  
Michael G. Fabiano, Chief Financial Officer  
Michael A. Fedorko, Director, Public Safety, Superintendent of Police  
Michael B. Francois, Chief, Real Estate and Development  
Jennifer Friedberg, Public Information Officer, Media Relations  
Richard Friedman, Manager, Special Projects, Office of Environmental and Energy Programs  
Cedrick T. Fulton, Director, Tunnels, Bridges and Terminals  
Kevin N. Georges, Leadership Fellow, Human Resources  
Glenn P. Guzi, Senior External Affairs Representative, Government and Community Affairs  
Linda C. Handel, Deputy Secretary  
Mark D. Hoffer, Director, New Port Initiatives, Port Commerce  
Kara B. Hughes, Senior External Relations Client Manager, Government and Community Affairs  
Howard G. Kadin, Esq., Law  
John P. Kelly, Acting Chief, Public and Government Affairs  
Louis J. Longoria, Chief Administrative Officer  
Cristin M. Ladd, Director, Government and Community Affairs  
Cono L. Ladd, Special Assistant to the Executive Director  
Richard M. Larabee, Director, Port Commerce  
Andrew S. Lynn, Director, Planning and Regional Development  
Stephen Marinko, Esq., Law  
Michael G. Massiah, Director, Management and Budget  
John Mezzacappa, Manager, Budget Consolidation and Reporting, Management and Budget  
James F. McCoy, Manager, Board Management Support, Office of the Secretary

Sanjay S. Mody, Advisor to the Chairman  
 Anne Marie C. Mulligan, Treasurer  
 Wilson M. Pacheco, Manager, General Ledger Financial Services, Comptroller  
 Jeffrey P. Pearce, Deputy Director, Aviation  
 Beth Siegel, General Manager, Capital Performance and Budgeting, Management and Budget  
 James O. Starace, Deputy Chief Engineer Deputy Director of Engineering  
 Timothy G. Strickelman, Assistant General Counsel  
 Gerald B. Stoughton, Director, Financial Analysts  
 Robert A. Sudman, Director, Audit  
 Ralph Tragale, Assistant Director, Public Affairs, Aviation  
 David B. Tweedy, Chief, Capital Programs  
 Lillian D. Valenti, Director, Procurement  
 Sheree Van Duyne, Manager, Policies and Protocol, Office of the Secretary  
 Andrew S. Warshaw, Chief of Staff to the Executive Director  
 David M. Wildstein, Director, Interagency Capital Projects, Office of the Deputy Executive  
 Director  
 Peter J. Zipf, Chief Engineer

#### Guests

A. Paul Blanco, Retiree, Former Chief Financial Officer  
 Johanna Jones, Assistant Counsel, Authorities Unit, Office of the Governor of New Jersey  
 Francis J. Lombardi, Retiree, Former Chief Engineer

#### Speakers

Murray Bodin, Member of the Public  
 Margaret Donovan, Twin Towers Alliance

**PORT OF NEW YORK AND NEW JERSEY – ESTABLISHMENT OF CARGO FACILITY CHARGE – ELIMINATION OF INTERMODAL CONTAINER LIFT FEE AND SEA LINK CONTAINER TERMINALS SUBSCRIPTION FEE – AMENDMENT OF AGREEMENTS WITH MILLENNIUM MARINE RAIL, LLC, NEW YORK CONTAINER TERMINAL, INC., AND PORT NEWARK CONTAINER TERMINAL, LLC**

It was recommended that the Board authorize the Executive Director to: (1) amend the Marine Terminal Tariff -- Federal Maritime Commission Schedule No. PA-10 Tariff (Tariff) to establish a new Port Authority cargo-based port infrastructure and security fee, to be known as the Cargo Facility Charge, that would be applicable to waterborne cargo discharged from or loaded onto vessels at Port Authority leased and public berths, in order to foster a more efficient, secure and productive Port of New York and New Jersey (Port), with the timing of the implementation of the Cargo Facility Charge to be determined by the Executive Director and the Chairman, consistent with the By-Laws; (2) eliminate the Intermodal Container Lift Fee; (3) eliminate the Sea-Link Container Terminal Subscription Fee; (4) amend the railroad operating agreements with Millennium Marine Rail LLC (Millennium) for ExpressRail Elizabeth and New York City Container Terminal (NYCT) for ExpressRail Staten Island, and the interim agreement with Port Newark Container Terminal (PNCT) for ExpressRail Port Newark, to reflect the elimination of the Intermodal Container Lift Fee; and (5) approve, for and on behalf of the Port Authority, future adjustments to the rates with respect to the Cargo Facility Charge and existing fees contained in the Tariff.

Increasing the operational efficiency for the movement of goods at the Port and throughout the region is a key strategic goal. To achieve that goal, the proposed Cargo Facility Charge would be assessed on all cargoes that benefit from capital investments in security, rail and road improvements. The proposed Cargo Facility Charge would be levied on all types of waterborne cargo moving through Port Authority marine terminal facilities -- containers, vehicles, and bulk breakbulk, general, heavy lift and special cargo. The timing of its implementation would be determined by the Executive Director and the Chairman, consistent with the By-Laws.

One component of the fee would recover capital expenditures incurred to construct our ExpressRail infrastructure. In addition to those who directly utilize the rail system, given the long-standing issues of road congestion in the Port, those who ship by truck have benefited from the investment in the ExpressRail system and continue to do so. Accordingly, it is fair and appropriate that they share in the cost of the investment in the ExpressRail system.

In 2004, an intermodal lift fee was implemented to recover the expenditures to date to construct Port-wide ExpressRail facilities. Rail cargo movements remove trucks from our terminals' gates and the Port and region's highways, and benefit regional cargo with the increased roadway and port capacity they provide. The ExpressRail System is an important link in the Port's logistics chain, the existence of which creates a more efficient transportation network for the transportation of containers while also mitigating negative environmental impacts to the region. Implementation of the Cargo Facility Charge (which includes the rail component) would eliminate the need for the Intermodal Container Lift Fee and be a broader and fairer assessment on the direct and indirect beneficiaries of the investment in ExpressRail.

As the agency continues to invest in the ExpressRail System, sufficient capacity on the Port's roadway system also must be provided, because the truck is, and will remain, the dominant mode of transport in the Port, due to the large local market we serve. The second component of the proposed Cargo Facility Charge would be charged proportionately to recover the cost of important Port roadway projects at Port Newark and the Elizabeth-Port Authority Marine Terminal (EPAMT), to reduce truck idling times and mitigate the attendant negative environmental impact caused by idling.

Under the third component of the Cargo Facility Charge, all cargoes would be charged proportionately for the partial recovery of the Port Authority's incremental post-9-11 security costs. Since September 11, 2001, the Port Authority has been, and continues to be, faced with the need to make the Port safer and more secure, by implementing a number of operational and physical security improvements at the marine terminal facilities, including those required by federal mandates. The agency accepts these responsibilities; however, in today's financial environment, the costs associated with these improvements must be shared with the benefited Port users. Accordingly, the proposed Cargo Facility Charge also would be used to partially defray the Port Authority's non-reimbursed incremental post-9-11 security-related operations and maintenance costs, and to recover a portion of previously unamortized capital investments. The security component of the fee may be adjusted in the future to reflect later investments of security-related capital costs.

The Cargo Facility Charge would be collected by the Port Authority's marine terminal tenants that operate private berths, and the Port Authority would directly collect the charge at public berths. Authorization also is requested for the Executive Director to approve future adjustments to the rates with respect to the Cargo Facility Charge, as well as other existing fees contained in the Tariff.

The establishment of the Cargo Facility Charge would require the elimination from the Tariff of the Intermodal Container Lift Fee and the Sea Link Container Terminals Subscription Fee, as costs recovered from these fees would now be recovered by the Cargo Facility Charge. In order to reflect the elimination of the Intermodal Container Lift Fee from the Tariff, the railroad operating agreements with Millennium for ExpressRail Elizabeth and NYCT for ExpressRail Staten Island, and the interim agreement with PNCT for ExpressRail Port Newark, as authorized by the Board in August 2004, April 2006 and July 2001, respectively, would be amended.

Pursuant to the foregoing report, the following resolution was adopted with Commissioners Bauer, Coscia, Grayson, Holmes, Moerdler, Poemo, Sartor, Silverman, and Steiner voting in favor, none against.

**RESOLVED**, that the Executive Director be and he hereby is authorized, on behalf of the Port Authority, to (1) amend the Marine Terminal Tariff, Federal Maritime Commission Schedule No. PA-10 Tariff (Tariff) to establish a new Port Authority cargo-based port infrastructure and security fee to be known as the Cargo Facility Charge, that will be applicable to waterborne cargo discharged from or loaded on to vessels at Port Authority leased and public berths, with the timing of the implementation of the Cargo Facility Charge to be determined by the Executive Director and the Chairman, consistent with the By-Laws; (2) eliminate the Intermodal

Container Lift Fee, (3) eliminate the Sea-Link Container Terminal Subscription Fee, (4) amend the railroad operating agreements with Millennium Marine Rail LLC for ExpressRail Elizabeth and New York Container Terminal for ExpressRail Staten Island, and the interim agreement with Port Newark Container Terminal for ExpressRail Port Newark, to reflect the elimination of the Intermodal Container Lift Fee, and (5) approve, for and on behalf of the Port Authority, future adoption of and adjustments to the rates with respect to the Cargo Facility Charge and existing fees contained in the Tariff, and it is further

**RESOLVED**, that the form of the foregoing amendments to the Tariff and agreements shall be subject to the approval of General Counsel or his authorized representative.



## **EXHIBIT 20**

**CONFIDENTIAL MATERIALS EXCLUDED**

## **EXHIBIT 21**

**CONFIDENTIAL MATERIALS EXCLUDED**

## **EXHIBIT 22**

**CONFIDENTIAL MATERIALS EXCLUDED**

## **EXHIBIT 23**

PCL

Lease No. EP-248

AGREEMENT

between

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY  
and

MAERSK CONTAINER SERVICE COMPANY, INC.

Dated as of January 6, 2000

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or alleged to arise out of the closing of any way or other area whether within or outside the Facility; provided, that, a reasonably equivalent means of ingress and egress remains available. The Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the premises or in, along, across or through any streets, ways and walks near the premises.

Section 11. Governmental and Other Requirements

(a) The Lessee shall procure from all governmental authorities having jurisdiction over the operations of the Lessee hereunder, all licenses, certificates, permits and other authorization which may be necessary for the conduct of such operations.

(b) The Lessee shall promptly observe, comply with and execute all laws and ordinances and governmental rules, regulations, requirements, orders and similar items, including without limitation all Environmental Requirements, now or at any time during the occupancy of the premises by the Lessee which as a matter of law are applicable to or which affect (i) the premises, (ii) the operations of the Lessee at the premises or the Facility, (iii) the use and occupancy of the premises and/or (iv) any Hazardous Substance which has migrated from the premises. The Lessee, at its sole cost and expense, shall make any and all structural and non-structural improvements, repairs or alterations of the premises and perform all remediation work and clean up of Hazardous Substances required in order to fully satisfy the compliance obligations set forth in this Agreement.

(c) The obligation of the Lessee to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property in or near the Facility, and proper operation by the Lessee. Such provision herein is not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

Section 12. Rules and Regulations

(a) The Lessee covenants and agrees to observe and obey, (and to compel its officers, employees and others on the premises with its consent to observe and obey) the Rules and Regulations of the Port Authority now in effect, and such further reasonable rules and regulations (including amendments and supplements thereto) for the government of the conduct and operations of the Lessee as may from time to time during the letting be promulgated by the Port Authority for reasons of safety, health, or preservation of property, or for the maintenance of the good and orderly appearance of the premises,

or for the safe or efficient operation of the Facility. The Port Authority agrees that, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation at least ten (10) days before the Lessee shall be required to comply therewith.

(b) If a copy of the Rules and Regulations is not attached as Exhibit R to this Agreement, then the Port Authority will notify the Lessee thereof either by delivery of a copy, or by publication in a newspaper published in the Port of New York District, or by making a copy available at the office of the Secretary of the Port Authority.

(c) No statement or provision in the Rules and Regulations shall be deemed a representation or promise by the Port Authority that the services or privileges described shall be or remain available, or that the charges, prices, rates or fees stated therein shall be or remain in effect throughout the letting, all of the same being subject to change by the Port Authority from time to time whenever it deems a change advisable.

#### Section 13. Method of Operation

(a) In the performance of its obligations hereunder and in the use of the premises, the Lessee shall conduct its operations in an orderly and proper manner, so as not to annoy disturb or be offensive to others near the premises or at the Facility, and as soon as reasonably possible the Lessee shall remove the cause of any objection made by the Port Authority relative to the demeanor, conduct or appearance of any of the employees of the Lessee or of any others on the premises with the consent of the Lessee.

(b) The Lessee shall not allow any garbage, debris or other waste materials (whether solid or liquid) to collect or accumulate on the premises and the Lessee shall remove from the premises and from the Facility all garbage, debris and other waste materials (whether solid or liquid) arising out of its operations hereunder. Any such material which may be temporarily stored shall be kept in suitable waste receptacles, the same to be made of metal and equipped with tight-fitting covers, and in any case to be designed and constructed to contain safely the waste material placed by the Lessee therein. Said receptacles shall be provided and maintained by the Lessee and shall be kept covered except when being filled or emptied. The Lessee shall use extreme care when effecting removal of all such material, shall effect such removal at such times and by such means as are first approved by the Port Authority, and shall in no event make use of any facilities or equipment of the Port Authority for the removal of such material except with the prior consent of the Port Authority.